

PATENT APPLICATION

**RESPONSE UNDER 37 CFR §1.116
EXPEDITED PROCEDURE
TECHNOLOGY CENTER ART UNIT 2872**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Takeshi SHIRAI et al.

Group Art Unit: 2872

Application No.: 10/569,207

Examiner: A. AMARI

Filed: February 23, 2006

Docket No.: 127104

For: OPTICAL ELEMENT AND EXPOSURE APPARATUS

REQUEST FOR RECONSIDERATION AFTER FINAL REJECTION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the August 3, 2009 Office Action, reconsideration of the above-identified application is respectfully requested. Claims 37-39 and 60-66 are pending in this application

The Office Action provisionally rejects claims 37-39 and 60-62 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3 and 7-12 of copending Application No. 11/512,087; and rejects claims 37 and 60 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 4 of copending Application No. 11/645,041. Applicants respectfully request that the rejections be withdrawn because (1) this application is the earlier application, (2) the applied applications are currently rejected over prior art, and (3) the only rejections that remain in this application are the nonstatutory obviousness-type double patenting rejections.

As stated in MPEP §804(I)(B)(1)(page 800-117), if a "provisional" nonstatutory obviousness-type double patenting rejection is the only rejection remaining in the earlier filed application, while the later filed application is rejectable on other grounds, the Examiner should withdraw that rejection and permit the earlier filed application to issue as a patent without a terminal disclaimer.

This section of the MPEP applies to this application, and thus the rejections should be withdrawn in order to allow this application to issue as a patent without a terminal disclaimer, because, using (1)-(3) above:

(1) This application is the earlier application. This application is the U.S. National Phase of PCT/JP2004/012296 filed on August 26, 2004 (thus this application is entitled to a U.S. filing date of August 26, 2004). U.S. Patent Application No. 11/645,041 is a continuation of PCT/JP2006/300587 filed on January 18, 2006, and U.S. Patent Application No. 11/512,087 is a non-provisional application filed on August 30, 2006.

(2) The applied applications, U.S. Patent Application No. 11/645,041 and U.S. Patent Application No. 11/512,087, are currently rejected over prior art, and a response has not been filed in either of the applications as of the filing date of this Request for Reconsideration.

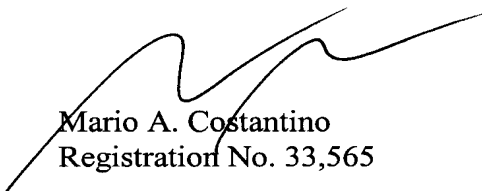
(3) The only rejections that remain are the provisional nonstatutory obviousness-type double patenting rejections.

It is respectfully requested that the rejections be withdrawn.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Date: October 15, 2009

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